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STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

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PUBLIC MEETING MINUTES:	COUNCIL ON REAL ESTATE APPRAISERS
MEETING DATE AND TIME:	Monday, May 6, 2013 at 2:00 p.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room A , 2nd floor of the Cannon Building
MINUTES APPROVED:	June 18, 2013

Members Present

Georgianna Trietley, Chair, Professional Member
Douglas Nickel, Professional Member
Lynn Baker, Professional Member
Brad Levering, Professional Member
Jan Jenkins, Public Banking Member
Frank Smith, Public Member

Division Staff/Deputy Attorney General

Kevin Maloney, Deputy Attorney General
Amanda McAtee, Administrative Specialist II
LaToya Stephens, Administrative Specialist II
James Collins, Division Director
Kay Warren, Deputy Director

Members Absent

Ronald Mandato, Vice Chair, Professional Member
Frank Long, Public Member
Richard Wheeler, Public Member

Public Present

None

Call to Order

Ms. Trietley called the meeting to order at 2:07 p.m.

New Business – Discussion of SB 38

The Council met on May 6, 2013 to discuss the Real Estate Valuation Advocacy Association's concerns that were submitted to the Council (refer to the two attachments) and suggested the following amendments to Senate Bill 38.

Ms. Trietley stated that the Real Estate Valuation Advocacy Association suggested that an AMC representative be added to the Council.

After discussion, Mr. Levering made a motion, seconded by Mr. Baker, to reject the suggestion to add an AMC representative to the Council since it was not practical given the statutory constraints and the desire to maintain an odd number of Council members.

Ms. Trietley read the first concern and suggested amendment to SB 38 for the Council:

- 1) Owner Requirements for AMC licensure (p.5, In.124, 129, others) – Language throughout the bill applies to persons being prohibited from serving as an owner of an AMC or otherwise requires an applicable owner to submit to a background check or requires an applicable owner to certify he/she has never lost their appraiser license (if applicable).
 - a) The provisions, however, apply to any and all owners of an AMC, regardless of the ownership interest held, whether direct, indirect, shareholder, etc.
 - b) This leads to the potential for any indirect owner of an AMC to be subject to a criminal background check or to a certification requirement, and also requires an AMC to perform due diligence to review every indirect owner (such as a shareholder) to validate whether he/she has ever had an appraiser license revoked.
 - c) We recommend that only owners of more than 10% of the AMC be subject to the certification and background check requirements. This is the standard provided in Dodd-Frank.

After discussion, Mr. Levering made a motion, seconded by Mr. Smith, to approve the suggestion that only owners of more than 10% of the AMC be subject to the certification and background check requirements. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 2) Request to consider additional property information (p.8, In 235) – AMCs (and lenders) typically request an appraiser to consider additional property information. This exception is included in the vast majority of state AMC laws and is imperative for us to be able to perform sufficient due diligence on the appraisal prior to delivery to the client.

After discussion, Mr. Levering made a motion, seconded by Mr. Smith, to reject this proposal contending that it was redundant and duplicative of the “provide additional information about the basis for a valuation” language found in Line 233. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 3) AMC Employee training (p.6, In.165-168) – We believe proposed section 4027 is unreasonable as drafted because it requires employees who manage the process of appraisers receiving appraisal orders to have training in appraisal standards.
 - a) These employees are not performing or reviewing appraisals for compliance with those appraisal standards, and the management of a system that processes appraisal orders should not require this type of education. In the alternative, we proposed that an employee who performs an appraisal review as defined in the bill, and would be reviewing an appraisal for compliance with appraisal standards, have appropriate training and be a licensed appraiser in Delaware or

any state.

After discussion, Mr. Nickel made a motion, seconded by Mr. Levering, to amend lines 165 through 168 as suggested. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 4) Clarification of reinstatement (p.5, ln.127, 146, 155; others) – We believe that an owner of more than 10% or a controlling person who has lost an appraiser license, but subsequently had it granted or reinstated, should be able to serve as an owner of an AMC or as a responsible party for the AMC. This language is common in the majority of states with AMC regulation.

After discussion, Mr. Nickel made a motion, seconded by Mr. Levering, to amend lines 127, 146, and 155 as suggested. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 5) Appraiser Independence – withholding pay (p.7, ln. 203-04) – We believe it is important to clarify that an AMC is not committing undue influence if the AMC withholds timely payment for an appraiser in cases of breach of contract. This language is consistent with the payment requirement provided on page 8, line 237-240.

After discussion, Mr. Nickel made a motion, seconded by Mr. Baker, to exclude the language suggested in lines 203 and 204 since this language is unnecessary given the language contained in lines 237-240, which provided for the withholding of payment in the event of breach of contract or substandard performance of services. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 6) Required second appraisal (p.7, ln.223) – We believe it is important to clarify that an AMC can obtain a second appraisal if required by law. For example, the new federal high risk mortgage rule requires a lender to obtain a second appraisal at its expense for certain transactions.

After discussion, Mr. Baker made a motion, seconded by Ms. Jenkins, to include line 223 with the language suggested. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 7) Disclosure of Fees (p.7, ln.197) – AMCs that have employee appraisers are not paid a fee, so we suggest the requirement that AMCs can't prohibit an appraiser from disclosing the fee he/she is paid only apply to independent contractor appraisers.

After discussion, Mr. Nickel made a motion, seconded by Mr. Baker, to accept the addition of line 197 with the language suggested. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 8) Exemption from Registration (p.4, ln.108-109) – We believe the exemption for AMCs that are part of a financial institution should be consistent with the Federal Financial Institutions Examination Council Act of 1978, as amended by Dodd-Frank.

After discussion, Mr. Baker made a motion, seconded by Mr. Levering, to accept the changes suggested for lines 108 through 109 and to delete lines 109 through 112 from the Bill. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 9) Clarification of Bond (p.4, In 100-105) - We support a requirement for an AMC to maintain a bond as a condition of licensure, but we believe it is important to clarify the purpose of the bond, how a claim against the bond can be initiated, and to what extent liability attaches for the surety.

After discussion, Mr. Nickel made a motion, seconded by Mr. Baker, to exclude the language suggested in lines 100 through 105 because there was no similar language that existed in any statute or regulation of which it was aware and concluded that it was more appropriate to address these types of issues in the language of the bond itself. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 10) Effective date (p.9, In.288-291) – Because licensure of AMCs would be a new process for the Council, we believe it is important to clarify that AMCs can continue to operate in the state within a certain grace period to permit the AMC to complete and submit the application, and for the Council to appropriate review the application.

After discussion, Mr. Nickel made a motion, seconded by Mr. Baker, to accept the changes suggested for lines 288 through 291. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 11) Cap on AMC fees (p.3, In.78; p.6, In. 179) – We believe it is important to provide AMCs with direction as to the cost of licensure. We recommend a cap of \$1,500 for the original license and for license renewal.

After discussion, Mr. Nickel made a motion, seconded by Ms. Jenkins, to exclude the language suggested in line 78 and 179 because the Division of Professional Regulation established fees as written in 29 Del. C. § 8735 (c) provided that “[t]he Division of Professional Regulation, with the approval of the Secretary of State, shall establish ... such appropriate fees as shall approximate and reasonably reflect all costs necessary to defray the expenses of such board or commission....”. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 12) Re-instatement of an Appraiser (p.9, In. 262-264) – We believe the Council should not be able to require an AMC to re-instate an appraiser onto its panel, even if the Council determines that the reason underlying the AMC’s decision to remove an appraiser is unwarranted.
 - a) I included language that allows the Council to provide an AMC of a written finding, but would not grant the Council power to mandate an appraiser be added to the AMC’s panel.
 - b) Please note that Council would still have the authority to discipline an AMC if an appraiser was removed from a panel due to undue influence or any other illegal reason.

After discussion, Mr. Baker made a motion, seconded by Mr. Levering, to exclude the language suggested in lines 262 through 264 because the authority to reinstate an appraiser who is wrongly removed from an appraiser panel best furthers the legislative intent. The mere authority to make “recommendations” to the appraisal management company does not guarantee the reinstatement of a wrongly removed appraiser to its appraisal panel. The motion carried unanimously.

Ms. Trietley read the next suggested amendment to SB 38 for the Council:

- 13) Removal of Appraisers (p.8, ln.250) – The highlighted language suggests an AMC must notify an appraiser when an AMC refuses to assign request for real property, but the provisions related to this section focuses on appraiser removal. AMCs may suspend an appraiser which means the appraiser remains on the AMC’s panel, but they are not receiving work for a limited period of time. We wanted this section to be unambiguous to ensure all AMCs can properly comply.

After discussion, Mr. Levering made a motion, seconded by Mr. Nickel, to exclude the language suggested in line 250 because this proposal concluded that it was important for the law to create an affirmative duty for the appraisal management company to assign requests for real property appraisal to all members of an appraisal panel. The motion carried unanimously.

Ms. Warren stated that S.B. 38 would be modified through a proposed amendment which would provide that “an appraisal management company may continue to conduct business in this State without registering pursuant to this Act until 180 days after the date rules implementing the registration process take effect.”

Public Comment

None

Next Meeting

The next meeting is scheduled for May 21, 2013 at 9:30 a.m. in Conference Room A second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Adjournment

Mr. Nickel made a motion, seconded by Mr. Baker to adjourn the meeting. There being no further business before the Council, the meeting adjourned at 4:25 p.m.

Respectfully submitted,



Amanda McAtee
Administrative Specialist II

The notes of this meeting are not intended to be a verbatim record of the topics that were presented or discussed. They are for the use of the Commission members and the public in supplementing their personal notes and recall for presentation.



SPONSOR: Sen. Peterson & Rep. Hudson
Sen. Sokola

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 38

AN ACT TO AMEND TITLE 24 CHAPTER 40 OF THE DELAWARE CODE RELATING TO THE COUNCIL ON REAL ESTATE APPRAISERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

THERE IS NO PROVISION ADDING AN AMC REPRESENTATIVE TO THE COUNCIL. Section 1.

Amend § 4002, Title 24 of the Delaware Code by deleting all numbers identifying the definitions and reordering all definitions alphabetically and renumbering them accordingly, and by making additions as shown by underlining and deletions as shown by strikethrough as follows:

"Appraisal Management Company" means a corporation, partnership, sole proprietorship, subsidiary or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term "appraisal management company", "mortgage technology provider", "lender processing services", "lender services", "loan processor", "mortgage services", "real estate closing services provider", "settlement services provider", "vendor management company" or any other term, and that does any of the following:

(a) administers an appraiser panel of independent contract appraisers to perform real property appraisal services in this state for clients.

(b) receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the real property appraisal services contained in the request.

(c) otherwise serves as a third party liaison of appraisal management services between clients and appraisers.

"Appraisal management services" means the process of receiving a request for the performance of real property appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.

"Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, but does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not communicate an opinion related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of Professional Appraisal Practice.

"Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management company to perform real property appraisal services for the appraisal management company.

25 "Controlling person" means any of the following:

26 (a) an owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal
27 management services in this state.

28 (b) an individual who is employed, appointed or authorized by an appraisal management company and who has the
29 authority to enter into a contractual relationship with clients for the performance of appraisal management services and to
30 enter into agreements with independent appraisers for the performance of real property appraisal services.

31 (c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the
32 management or policies of an appraisal management company.

33 "FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of
34 ~~August 9, 1989 (Pub. L. 101-73, 103 Stat. 183)~~July 21, 2010.

35 "Licensed real property appraiser" shall mean a person, who has met the licensing requirements of this chapter and
36 who may appraise non-complex 1 to 4 residential units having a transaction value less than \$1,000,000 and complex 1 to 4
37 residential units having a transaction value of \$250,000 or less, and who holds a current, valid license issued under this
38 chapter. Licensed appraisers can not appraise a property with a market value in excess of \$1,000,000."

39 § 4002. Definitions.

40 Section 2. Amend § 4006 Title 24 of the Delaware Code by making additions as shown by underlining and
41 deletions as shown by strikethrough as follows:

42 § 4006. Powers and duties.

43 (a) The Council on Real Estate Appraisers shall have authority to:

44 ~~(9) Evaluate certified records to determine whether an applicant for certification or licensure, who previously has~~
45 ~~been licensed, certified, or registered in another jurisdiction as a appraiser, has engaged in any act or offense that would be~~
46 ~~grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints~~
47 ~~pending against such applicant for such acts or offenses.~~

48 Section 3. Amend § 4011 Title 24 of the Delaware Code by making additions as shown by underlining and
49 deletions as shown by strikethrough as follows:

50 § 4011. Reciprocity.

51 (a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the
52 Council, the Council shall grant a license to each applicant, who shall present proof of current licensure in good standing in
53 another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially
54 similar to those of this State. ~~A license in "good standing" is defined in § 4008 (a)(2), (3), (4), and (5) of this title.~~

55 Section 4. Amend Title 24 of the Delaware Code by making additions as shown by underlining and deletions as
56 shown by strikethrough as follows:

57 § 4021. Criminal background checks of new applicants.

An applicant for licensure or certification under sections 4008 or 4009 of this chapter shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council shall be the screening point for the receipt of said federal criminal history records.

Section 5. Amend Title 24 of the Delaware Code by making additions as shown by underlining and deletions as shown by strikethrough as follows:

Subchapter IV Appraisal Management Companies

§ 4022 Registration of Appraisal Management Companies.

a. A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the Council pursuant to this section, regardless of the entity's use of appraisal management company, mortgage technology company or any other name.

b. A person who wishes to be registered as an appraisal management company in this state must file a written application with the Council on a form prepared and furnished by the Council and pay a fee in an amount to be determined by the Division of Professional Regulation, **NOT TO EXCEED \$1,500**. The registration required by subsection (a) shall include:

1. the name, residence address, business address and telephone number of the applicant and the location of each principal office and branch office at which the appraisal management company will conduct business in this state.

2. the name under which the applicant will conduct business as an appraisal management company.

3. the name, residence address, business address and telephone number of each person who will have an interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and title of each person.

4. If the person seeking registration is a corporation that is not domiciled in this state, the name and contact information for the company's registered agent for service of process in this state.

5. A certification that the person seeking registration has a system and process in place to verify that a person being added to the appraiser panel for the appraisal management company's appraisal management services in this state holds a license or certification in good standing in this state.

6. A certification that the person seeking registration has a system in place to review the work of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

7. A certification that the person maintains a detailed record of each service request that it receives and the independent appraiser that performs the real property appraisal services for the appraisal management company.

8. A certification that the person seeking registration has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

9. Proof of a surety bond of twenty thousand dollars, **AND SHALL BE IN FAVOR OF THE STATE FOR THE BENEFIT OF ANY PERSON WHO IS DAMAGED BY ANY VIOLATION OF THIS ACT. THE BOND SHALL ALSO BE IN FAVOR OF ANY PERSON DAMAGED BY SUCH A VIOLATION, AND A CLAIM ON THE BOND SHALL BE COMMENCED IN A COURT OF COMPETENT JURISDICTION. THE AGGREGATE LIABILITY OF THE SURETY TO ALL PERSONS DAMAGED BY A VIOLATION OF THE ACT BY AN APPRAISAL MANAGEMENT COMPANY SHALL NOT EXCEED THE AMOUNT OF THE BOND.**

§4023 Exemptions from Registration.

Nothing in this chapter shall apply to:

a. **AN APPRAISAL MANAGEMENT COMPANY THAT IS A SUBSIDIARY OWNED AND CONTROLLED BY** ~~A department or unit within a financial institution that is subject to direct regulation by an agency of the United States government or of this State and that receives requests for the performance of real estate appraisals from the financial institution and then assigns such requests to an appraiser who is part of the financial institution's appraiser panel.~~

b. A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business and that is responsible for ensuring that the real property appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice and federal and state law.

§ 4024 Registration Form for Appraisal Management Companies.

a. An applicant for initial and renewal registration as an appraisal management company shall submit to the Council an application on a form prescribed by the Council.

b. An initial registration granted by the Council pursuant to this chapter is valid for two years. Registration renewals are renewed biennially.

§ 4025 Owner Requirements for Appraisal Management Companies.

a. An appraisal management company applying for registration may not be **MORE THAN TEN PERCENT** owned by a person or have any principal of the company who has had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, **unless such license or certificate was subsequently granted or reinstated.** This requirement may be waived by appeal and at the discretion of the Council.

b. Each person that owns **MORE THAN TEN PERCENT OF THE** ~~is an officer of or has a financial interest in~~ an appraisal management company in this state shall:

1. Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

i. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

ii. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

iii. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to the Council.

2. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this state or in any other state, **UNLESS SUCH LICENSE OR CERTIFICATE WAS SUBSEQUENTLY GRANTED OR REINSTATED.** This requirement may be waived by appeal and at the discretion of the Council.

§ 4026 Appraisal Management Company Controlling Person.

a. Each appraisal management company applying to the Council for registration in this state shall designate one controlling person that will be the main contact for all communication between the Council and the appraisal management company.

b. To serve as a controlling person of an appraisal management company, a person shall:

1. Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate issued by this state, or any other state, refused, denied, canceled, revoked or voluntarily surrendered, **UNLESS SUCH LICENSE OR CERTIFICATE WAS SUBSEQUENTLY GRANTED OR REINSTATED.** This requirement may be waived by appeal and at the discretion of the Council.

157 2. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of
158 Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be
159 the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the
160 receipt of said federal criminal history records.

161 An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant
162 whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to
163 § 4008(a)(4) of this Chapter. The State Bureau of Identification may release any subsequent criminal history to the Council.
164 § 4027 Appraisal Management Company Employees.

165 **ANY EMPLOYEE OF THE APPRAISAL MANAGEMENT COMPANY THAT PERFORMS AN APPRAISAL**
166 **REVIEW SHALL HAVE DEMONSTRATED KNOWLEDGE OF THE UNIFORM STANDARDS OF**
167 **PROFESSIONAL APPRAISAL PRACTICE AND HOLD A VALID APPRAISER LICENSE OR**
168 **CERTIFICATION IN THIS STATE OR ANY STATE.**

169 ~~Any employee of an appraisal management company, or any person working on behalf of an appraisal management~~
170 ~~company, who has the responsibility of selecting independent appraisers for the performance of real property appraisal~~
171 ~~services for the appraisal management company or providing appraisal review services on a completed appraisal, shall be~~
172 ~~appropriately trained and qualified in compliance with this Uniform Standards of Professional Appraisal Practice.~~

173 § 4028 Agreements with Independent Appraisers: Limitations.

174 An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or
175 agreements with an independent appraiser for the performance of real property appraisal services in this state unless that
176 person is licensed or certified in good standing with the Council.

177 § 4029 Biennial Certification: Renewal.

178 a. Each appraisal management company registered in this state shall certify to the Council on an biennial basis at
179 the time of renewal, on a form prescribed by the Council and after paying the appropriate fee, **NOT TO EXCEED \$1,500,**
180 that the appraisal management company has a system and process in place to verify that a person being added to the
181 appraiser panel of the appraisal management company holds a license or certificate in good standing in this state pursuant to
182 the Council.

183 b. Each appraisal management company registered in this state shall certify to the Council on a biennial basis, at
184 the time of renewal, that it has a system in place to review the quality of appraisals of all independent appraisers that are
185 performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the
186 real property appraisal services are being conducted in accordance with uniform standards of professional appraisal
187 practice.

188 c. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of
189 renewal, that it maintains a detailed record of each service request that it receives and the name of the independent appraiser
190 that performs the real property appraisal services for the appraisal management company. An appraisal management

company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal record for the same real property appraisal activity.

d. Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of renewal, that it has a system in place to train those who select individual appraisers for real property services in this state, to ensure that the selectors have appropriate training in placing appraisal assignments.

§ 4030 Disclosure of Fees.

The appraisal management company shall not prohibit the **INDEPENDENT** appraiser from reporting in the appraisal report the fee paid to the appraiser.

§ 4031 Appraiser Independence; Prohibitions.

a. Any employee, director, officer or agent of an appraisal management company registered pursuant to this chapter shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

1. Withholding or threatening to withhold timely payment for an appraisal **EXCEPT IN CASES OF BREACH OF CONTRACT OR SUBSTANDARD PERFORMANCE OF SERVICES.**

2. Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser.

3. Expressly or implicitly promising future business, promotions or increased compensation for an independent appraiser.

4. Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser.

5. Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.

6. Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

7. Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

8. Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser.

9. Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless **SUCH ACTION IS REQUIRED BY LAW OR** there is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in

the loan file or unless the appraisal or automated valuation model is done pursuant to a bona fide pre-funding or post-funding appraisal review or quality control process.

10. Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

b. An appraisal fee offered or paid may not be based on the predetermined value or range of value of the subject property or the amount of the transaction price.

c. Subsections (a) and (b) do not prohibit an appraisal management company from requesting that an independent appraiser either:

1. Provide additional information about the basis for a valuation.

2. Correct objective factual errors in an appraisal report.

3. CONSIDER ADDITIONAL PROPERTY INFORMATION.

§ 4032 Payment.

Except in cases of breach of contract or substandard performance of services, each appraisal management company shall make payment to an independent appraiser for the completion of an appraisal or valuation assignment within forty-five days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

§ 4033 Appraisal Reports: Alteration; Use.

An appraisal management company shall not:

1. Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser, including removing the signature of the appraiser.

2. Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated in the report.

§ 4034 Removal of Appraisers from Appraiser Panels.

a. Except within the first sixty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real property appraisal services to an independent appraiser, without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company.

b. An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice or violation of state licensing standards may file a complaint with the Council for a review of the decision of the appraisal management company, except that in no case shall the Council make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in subsection (a).

c. If an independent appraiser files a complaint against an appraisal management company pursuant to subsection (b), the Council shall adjudicate the complaint within a reasonable time.

d. If after opportunity for a hearing and review, the Council determines that an independent appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice or a violation of this Chapter, the Council shall: **(I) PROVIDE WRITTEN FINDINGS TO THE INVOLVED PARTIES; (II) PROVIDE AN OPPORTUNITY FOR THE APPRAISAL MANAGEMENT COMPANY AND/OR THE APPRAISER TO RESPOND TO THE FINDINGS; AND (III) MAKE RECOMMENDATIONS FOR ACTION.** ~~order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.~~ The Council shall furnish the appraisal management company with all written documentation and investigation records that support the Council's findings.

§ 4035 Enforcement.

The Council may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this chapter or impose civil penalties not to exceed fifteen thousand dollars per violation if, after a hearing, the Council finds that an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

1. Committing any act in violation of this chapter.

2. Violating any rule adopted by the Council in the interest of the public and consistent with this chapter.

3. Knowingly making or causing to be made to the Council any false representation of material fact.

4. Suppressing or withholding from the Council any information that the applicant possesses and that, if submitted by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the Council.

5. Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010.

§ 4036 Disciplinary Hearing.

a. The Council may conduct disciplinary proceedings in accordance with Title 29, Chapter 101, Subchapter III.

b. The written notice required by Title 29, Chapter 101, Subchapter III shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail to the controlling person of the registrant to the registrant's address on file with the Council.

§ 4037 Rule Making Authority.

The Council shall adopt rules that are reasonably necessary to implement, administer and enforce this section.

EFFECTIVE DATE CLARIFICATION

AN APPRAISAL MANAGEMENT COMPANY MAY CONTINUE TO CONDUCT BUSINESS IN THIS STATE WITHOUT REGISTERING PURSUANT TO THIS ACT UNTIL 120 DAYS AFTER THE DATE RULES IMPLEMENTING THE REGISTRATION PROCESS TAKE EFFECT.

Section 6. Amend Title 24 of the Delaware Code by making additions as shown by underlining and deletions as shown by strikethrough as follows:

§4016A Counseling: Letters of Concern.

a. If the Council determines after an investigation that a violation of this chapter or of the rules and regulations enacted pursuant to this chapter warranting formal disciplinary action has not occurred, but that an act or omission of the licensee or certificate holder is a matter of concern and that licensee's or certificate holder's practice may be improved if made aware of the concern, the Council may issue a non-disciplinary confidential letter of concern regarding the licensee's or certificate holder's act or omission.

b. If a person licensed under this chapter receives a total of three letters of concern pursuant to this section, the Council may reasonably require a formal assessment of professional competency to assess the licensee's or certificate holder's ability in order to protect the health and safety of the public. At such hearing, all of the licensee's or certificate holder's letters of concern may be deemed no longer confidential and may be admitted into evidence.

SYNOPSIS

Section 1 clarifies that a licensed appraiser cannot appraise a property in Delaware with a market value in excess of one million dollars. Only a certified residential or general certified appraiser may appraise properties with this market value. This change is necessary, and was recommended by the federal Appraisal Sub-Committee in order for Delaware law to comply with the AQB mandatory changes. Additionally, this section defines new terms to the chapter that are added by the creation found in Section 5.

Section 2 removes the power to examine disciplinary records of foreign jurisdictions for new applicants. The AQB requires applicants deemed to be in "good standing" be granted licensure in Delaware and thus, this power is surplusage. This change is necessary to comply with the Dodd-Frank Act.

Section 3 clarifies that reciprocal applicants will be deemed to be in "good standing" by their home licensure state without the additions imposed on new applicants. This change is necessary to comply with the Dodd-Frank Act.

Section 4 requires all new applicants provide criminal background checks at their own expense. This change will be required by the Dodd-Frank Act in 2015.

Section 5 creates regulation of Appraisal Management Companies which are cropping up all over the country, working as the middle man between mortgage companies and real estate appraisers. These middle men are necessary as Federal law bars mortgage companies from contacting real estate appraisers directly. However, Appraisal Management Companies are completely unregulated in this State. This bill brings Appraisal Management Companies under the jurisdiction of the Council on Real Estate Appraisers, sets standards for obtaining registration, requires principals of Appraisal Management Companies to submit to a criminal background check and prohibits the Appraisal Management Company from keeping the mortgage company the fee amount paid to the appraiser.

Section 6 empowers the Council to issue a letter of concern to a licensee who the Council finds did not violate a statute or rule, but who could benefit from having the Council's concern pointed out to her/him. Letters of concern are non-disciplinary, but any one licensee who receives three may be called before the Council for a competency assessment.

Author: Sen. Peterson

- 1) Owner Requirements for AMC licensure (p.5, ln.124, 129, others) – Language throughout the bill applies to persons being prohibited from serving as an owner of an AMC or otherwise requires an applicable owner to submit to a background check or requires an applicable owner to certify he/she has never lost their appraiser license (if applicable).
 - a) The provisions, however, apply to any and all owners of an AMC, regardless of the ownership interest held, whether direct, indirect, shareholder, etc.
 - b) This leads to the potential for any indirect owner of an AMC to be subject to a criminal background check or to a certification requirement, and also requires an AMC to perform due diligence to review every indirect owner (such as a shareholder) to validate whether he/she has ever had an appraiser license revoked.
 - c) We recommend that only owners of more than 10% of the AMC be subject to the certification and background check requirements. This is the standard provided in Dodd-Frank.
- 2) Request to consider additional property information (p.8, ln 235) – AMCs (and lenders) typically request an appraiser to consider additional property information. This exception is included in the vast majority of state AMC laws and is imperative for us to be able to perform sufficient due diligence on the appraisal prior to delivery to the client.
- 3) AMC Employee training (p.6, ln.165-168) – We believe proposed section 4027 is unreasonable as drafted because it requires employees who manage the process of appraisers receiving appraisal orders to have training in appraisal standards.
 - a) These employees are not performing or reviewing appraisals for compliance with those appraisal standards, and the management of a system that processes appraisal orders should not require this type of education. In the alternative, we proposed that an employee who performs an appraisal review as defined in the bill, and would be reviewing an appraisal for compliance with appraisal standards, have appropriate training and be a licensed appraiser in Delaware or any state.
- 4) Clarification of reinstatement (p.5, ln.127, 146, 155; others) – We believe that an owner of more than 10% or a controlling person who has lost an appraiser license, but subsequently had it granted or reinstated, should be able to serve as an owner of an AMC or as a responsible party for the AMC. This language is common in the majority of states with AMC regulation.
- 5) Appraiser Independence – withholding pay (p.7, ln. 203-04) – We believe it is important to clarify that an AMC is not committing undue influence if the AMC withholds timely payment for an appraiser in cases of breach of contract. This language is consistent with the payment requirement provided on page 8, line 237-240.
- 6) Required second appraisal (p.7, ln.223) – We believe it is important to clarify that an AMC can obtain a second appraisal if required by law. For example, the new federal high risk mortgage rule requires a lender to obtain a second appraisal at its expense for certain transactions.
- 7) Disclosure of Fees (p.7, ln.197) – AMCs that have employee appraisers are not paid a fee, so we suggest the requirement that AMCs can't prohibit an appraiser from disclosing the fee he/she is paid only apply to independent contractor appraisers.

- 8) Exemption from Registration (p.4, ln.108-109) – We believe the exemption for AMCs that are part of a financial institution should be consistent with the Federal Financial Institutions Examination Council Act of 1978, as amended by Dodd-Frank.
- 9) Clarification of Bond (p.4, ln 100-105) - We support a requirement for an AMC to maintain a bond as a condition of licensure, but we believe it is important to clarify the purpose of the bond, how a claim against the bond can be initiated, and to what extent liability attaches for the surety.
- 10) Effective date (p.9, ln.288-291) – Because licensure of AMCs would be a new process for the Council, we believe it is important to clarify that AMCs can continue to operate in the state within a certain grace period to permit the AMC to complete and submit the application, and for the Council to appropriate review the application.
- 11) Cap on AMC fees (p.3, ln.78; p.6, ln. 179) – We believe it is important to provide AMCs with direction as to the cost of licensure. We recommend a cap of \$1,500 for the original license and for license renewal.
- 12) Re-instatement of an Appraiser (p.9, ln. 262-264) – We believe the Council should not be able to require an AMC to re-instate an appraiser onto its panel, even if the Council determines that the reason underlying the AMC’s decision to remove an appraiser is unwarranted.
 - a) I included language that allows the Council to provide an AMC of a written finding, but would not grant the Council power to mandate an appraiser be added to the AMC’s panel.
 - b) Please note that Council would still have the authority to discipline an AMC if an appraiser was removed from a panel due to undue influence or any other illegal reason.
- 13) Removal of Appraisers (p.8, ln.250) – The highlighted language suggests an AMC must notify an appraiser when an AMC refuses to assign request for real property, but the provisions related to this section focuses on appraiser removal. AMCs may suspend an appraiser which means the appraiser remains on the AMC’s panel, but they are not receiving work for a limited period of time. We wanted this section to be unambiguous to ensure all AMCs can properly comply.